

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES HAYDEN,

CASE NO: 1:17CV2635

Plaintiff,

v.

2K GAMES, INC., et al.,

Defendants.

Deposition of JAMES HAYDEN

Cleveland, Ohio

Wednesday, October 30, 2019 - 9:04 a.m.

Reported by:

Angela Nixon, RMR, CRR

Job No.: 26345

1 A. No, not too much.

2 Q. But you've done that sometimes, though, right?

3 A. Yeah.

4 Q. Have you produced all communications with
5 Mr. James, Mr. Green and Mr. Thompson?

6 A. I think so.

7 Q. Have you produced all communications with any
8 representatives of them?

9 A. Yes.

10 Q. Have you ever spoken to Mr. James or any of his
11 representatives about this lawsuit?

12 A. Randy Mims.

13 Q. Who's Randy Mims?

14 A. He's -- I think he's LeBron's agent, one of --
15 one of his agents.

16 Q. And when did you speak to Mr. Mims?

17 A. A few months ago.

18 Q. Did you reach out to him, did he reach out to
19 you?

20 A. I reached out to him.

21 Q. Why?

22 A. It was regards to a contract with Warner
23 Brothers.

24 Q. Did you have a conversation with him about this
25 lawsuit?

1 Q. Is it your position that newspapers need a
2 license from you to publish photographs of Mr. James
3 showing his tattoos in their papers?

4 MR. MCMULLEN: Objection.

5 A. No.

6 Q. Why not?

7 A. There's a very distinct line between avatars and
8 human form that's photographed.

9 Q. So you -- what is the very distinct line between
10 avatars and human form or whatever?

11 A. Humans are humans. You walk, talk, move, feel,
12 so on and so forth, where as an Avatar is a
13 computer-generated image. And as far as these tattoos,
14 these tattoos are -- are added to these computer-generated
15 images.

16 Q. Well, let's -- let's keep asking you some things.
17 Let me show you -- and I take it you never told any
18 newspaper that they couldn't run pictures of the people you
19 inked showing their tattoos, right?

20 MR. MCMULLEN: Objection.

21 A. Are the -- are the newspapers creating avatars?

22 Q. Have you ever told a newspaper that they couldn't
23 run photographs showing the players you inked with their
24 tattoos, yes or no?

25 MR. MCMULLEN: Objection.

1 A. No.

2 Q. And let me show you what's been marked as Exhibit
3 22. I'll represent to you that this is an image of Mr. --
4 that Mr. James posted on his Instagram account. Do people
5 need your permission to post photographs of themselves
6 showing their tattoos on social media?

7 MR. MCMULLEN: Objection.

8 A. No.

9 Q. Why not?

10 MR. MCMULLEN: Objection.

11 A. Say it again, I'm sorry.

12 Q. Why not?

13 MR. MCMULLEN: Objection.

14 A. He's in human form, he's not an avatar.

15 Q. So it's okay if his tattoos are shown because
16 he's not an avatar?

17 A. Yeah.

18 MR. MCMULLEN: Objection.

19 BY MS. CENDALI:

20 Q. You do understand that when we're looking at
21 Exhibit 22, that the -- the photograph of Mr. James on his
22 Instagram account, that's not really Mr. James, right?

23 MR. MCMULLEN: Objection.

24 A. This is not really Mr. James?

25 Q. Well, what I mean is, it's a photograph of

1 was talking about television I wasn't talking about playing
2 a video game on a television screen. My question to you
3 is, is it your position that it -- that when a player
4 appears on television playing basketball in an NBA game, or
5 at a news conference about an NBA game, that they need your
6 permission to be depicted with your tattoos?

7 MR. MCMULLEN: Objection, calls for a legal
8 conclusion.

9 A. In regular life form, no, but in NBA 2K form,
10 avatar form, yes.

11 Q. Okay. So in regular life, if I'm just tuning in
12 a Cavs or Lakers or Raptors game, players that you would
13 have inked playing would not need your permission, is
14 that --

15 MR. MCMULLEN: Objection.

16 A. I don't know.

17 Q. Okay. Have you ever told a player that they
18 needed your permission before appearing on television
19 playing basketball?

20 A. No.

21 Q. Have you ever told the NBA that they needed your
22 permission to depict players on television playing NBA
23 games showing their tattoos?

24 A. No.

25 Q. Have you ever done anything to try to stop that?

1 A. These were designs that I currently have
2 copyrights to that I -- I did on LeBron.

3 Q. And did you -- so these were -- which designs did
4 you put on the shoes?

5 A. There was a lion on the front of the toe of, I
6 think the right shoe, and then a crown, just like the one
7 on his shoulder on the other -- left front of the shoe. It
8 said family on one side of the shoe and loyalty just like
9 the ones that are on the side of his body.

10 Q. So these were -- I'm trying to understand. These
11 were additional tattoos that you had inked on LeBron, or
12 were these part of the ones that you're already suing
13 about?

14 A. There was -- there were some additional designs
15 on the side of the shoes just like the side of his body,
16 yeah.

17 Q. So the shoes didn't have pictures of Mr. James on
18 them, they just had these images, parts of these designs?

19 A. Yes. Yes.

20 Q. And I take it that this agreement, Exhibit 26,
21 had nothing to do with video games, right?

22 A. No, there's no avatar production in these
23 video -- or video game production of this release here.

24 Q. Yeah, this was about the shoes?

25 A. Yes.

1 A. No, just the tattoos that I did.

2 Q. So that's my question. Did you, in doing these
3 mannequins, did you ink tattoos that other people had inked
4 on Mr. James, or just yours?

5 A. These are just my tattoos that I did on LeBron.

6 Q. Do you know if there were any tattoos that were
7 visible in the area on the mannequins that somebody else
8 had done?

9 A. Not that I know of.

10 Q. And were you paid \$2,600 for preparing the
11 mannequin for China, 1,300 for London, and 2,600 for WHQ?

12 A. Correct.

13 Q. And in order to do this, did you have to -- did
14 you do this work in Cleveland, or did you have to fly
15 somewhere?

16 A. I did it at -- I think this was done at the
17 headquarters in Oregon, in Portland.

18 Q. So you flew out there and you -- did you use an
19 air brushed paint that -- for the tattoos on the
20 mannequins?

21 A. I used air brush and paint brushes.

22 Q. And then looking at what we'll mark as Exhibit
23 28, this is bearing Bates Number Hayden 1751. It appears
24 to be an e-mail exchange of October 9th, 2009 from
25 Mr. Patton to you. Do you recognize that as an e-mail you

1 got from him?

2 A. Yes.

3 Q. And in it it says, (Reading:) Listen, Nike would
4 like to request your special services again for the air
5 brushing of tattoos on a new LeBron mannequin. Do you see
6 that?

7 A. Yes.

8 Q. And did you understand that Nike was contracting
9 with you to air brush these designs on the mannequins?

10 A. Yes.

11 Q. And did you, in fact, enter into another
12 mannequin project for them after the first one?

13 A. Yes, I did.

14 Q. So let's take a look at what's been marked as
15 Exhibit 29, Hayden 388. Is that a picture of the -- one of
16 the mannequins of Mr. James that you airbrushed tattoos on?

17 A. Yes.

18 Q. And under his arms it says what we do in life and
19 echos in eternity, do you see that?

20 A. Yes, I do.

21 Q. Did you ink those phrases on Mr. James?

22 A. Yes.

23 Q. They're not part of this lawsuit, though,
24 correct?

25 MR. MCMULLEN: Objection.

1 MR. MCMULLEN: Objection.

2 A. I don't know.

3 Q. You're not aware of any income that you've lost,
4 correct?

5 A. I'm not sure.

6 MR. MCMULLEN: Objection.

7 BY MS. CENDALI:

8 Q. You don't know of any lost income as you sit here
9 today, isn't that true?

10 MR. MCMULLEN: Objection.

11 A. My -- I don't know.

12 Q. You're not aware of any, correct?

13 MR. MCMULLEN: Objection.

14 A. I don't know.

15 Q. Can you point me to any lost income that you have
16 suffered as a result of the players appearing in games?

17 MR. MCMULLEN: Objection.

18 A. I don't know if I've lost revenue from the
19 players playing in the games, the video games.

20 Q. Could you please tell me what your factual basis
21 is, if any, of any claim that you have lost revenue as a
22 result of them appearing in the games?

23 MR. MCMULLEN: Objection.

24 A. I don't know.

25 Q. You're not able to provide any factual basis, is

1 that your testimony?

2 A. Right now I don't know.

3 Q. Okay. So you don't have -- right now you can't
4 give me any facts relating to any lost income, is that
5 true?

6 MR. MCMULLEN: Objection.

7 A. I don't know right now.

8 Q. Sir, if we have to resume your deposition we
9 will.

10 A. I don't know.

11 Q. I'm asking you very clearly a question --

12 A. Uh-huh.

13 Q. -- are you aware of any lost income as a result
14 of them appearing in the games, yes or no?

15 MR. MCMULLEN: Objection.

16 A. Let me think about this. How would I know what
17 revenue I've lost?

18 Q. Somebody would -- would say I'm not doing a deal
19 with you.

20 A. Maybe they -- maybe it's unspoken, maybe it's
21 just not --

22 Q. Well, either you would know it or you don't know
23 it. Do you know --

24 A. No, there's --

25 Q. -- of any facts --

1 A. It's a gray area, it's a very vague question.

2 Q. Move to strike as nonresponsive. It's obvious
3 that you're being evasive.

4 My question is what you know. Do you know,
5 sitting here today, of any lost income, do you have any
6 facts with regard to any lost income as a result of these
7 players appearing in the video game, either you know
8 something or you don't?

9 MR. MCMULLEN: Objection.

10 A. I guess not, not right now.

11 Q. Have you lost any licensing opportunities as a
12 result of Take-Two's depiction of the players in the game?

13 MR. MCMULLEN: Objection.

14 A. Licensing as in what?

15 Q. Any licensing whatsoever.

16 A. Not that I know of.

17 Q. How much money do you think Take-Two should pay
18 you?

19 MR. MCMULLEN: Objection.

20 A. I'm not sure.

21 Q. Do you have any thoughts as to how much money you
22 think Take-Two should pay you and why?

23 A. I'm not sure at this point, not right now.

24 Q. So you have -- so you can't answer about how much
25 you think you should be owed; is that right?

1 MR. MCMULLEN: Objection.

2 A. A reasonable amount in conjunction with the use
3 of those copyright designs.

4 Q. And what, in your mind, would be a reasonable
5 amount?

6 A. I don't know --

7 MR. MCMULLEN: Objection.

8 A. -- at this time.

9 Q. Well, you've licensed other tattoos for \$500,
10 right, do you think \$500 would be a reasonable amount?

11 MR. MCMULLEN: Objection.

12 A. I don't think so.

13 Q. Why?

14 A. Those designs weren't reproduced as avatars in --
15 in a video game.

16 Q. Some of those designs were reproduced in motion
17 pictures, weren't they?

18 A. I don't know. I don't know how they reproduced
19 them, I wasn't there.

20 Q. So you, sitting here today, cannot say -- speak
21 to me at all about what you are -- think would be
22 reasonable compensation in this case, is that right?

23 MR. MCMULLEN: Objection.

24 A. That's right.

25 Q. And you can't give me any facts that you believe

1 would justify a particular damages amount, is that right?

2 MR. MCMULLEN: Objection.

3 A. Currently not yet.

4 Q. Now, where were the computers located that --
5 that had the e-mails that you produced in this case?

6 A. Say it again, I'm sorry, I'm breaking this cord
7 here.

8 Q. You said that -- you said that e-mails were
9 produced in this case, is that right?

10 A. E-mails produced in this case?

11 Q. E-mails from your files were collected and
12 produced in this case, correct?

13 A. Yes.

14 Q. So what was the process to obtain those e-mails?

15 A. Pass code and e-mail address.

16 Q. And did you give those pass codes to your
17 attorneys?

18 A. Yes.

19 Q. Where physically were the computers?

20 MR. MCMULLEN: Objection.

21 A. Physically in my -- in my hand, my iPhone.

22 Q. So were all these e-mails from your iPhone?

23 A. Correct.

24 Q. So you don't have a laptop or other computer?

25 A. I do have a laptop.

1 sure whether this was it?

2 MR. MCMULLEN: Objection.

3 A. This -- this wasn't -- this doesn't look like the
4 one from ten years ago.

5 Q. Okay. And can you describe for me what the one
6 from ten years ago looked like?

7 A. I cannot. I don't remember what it looked like.
8 Doesn't look like this, though, looked more like a -- like
9 a regular playing card.

10 Q. You can't remember -- you can't describe what it
11 looked like, but you knew it didn't look like this, is that
12 your testimony?

13 MR. MCMULLEN: Objection.

14 A. Yes, basically.

15 Q. Now, besides your communications with Randy Mims,
16 have you ever had communications with anyone else about
17 this lawsuit?

18 A. No.

19 Q. Before you brought this lawsuit, did you discuss
20 suing Take-Two from anyone other than your attorneys?

21 A. Ask -- ask me that question again.

22 Q. Sure. Before you brought this lawsuit, did you
23 discuss the possibility of suing Take-Two with anyone other
24 than your attorneys?

25 A. No.